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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,708	05/17/2001	David M. Shaw	12293-19	4131

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EXAMINER

TAYLOR, NICHOLAS R

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,708

Applicant(s)

SHAW, DAVID M.

Examiner

Nicholas R. Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/28/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

S.O.O.

DETAILED ACTION

1. The proposed amendments to the specification filed on 3/28/2005 are approved.
2. Claims 15-25 have been presented for examination and are rejected.

Response to Arguments

3. Applicant's arguments filed 3/28/2005 with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

4. Claim 15 is objected to because of the following informalities:

"Apparatus" needs an indefinite article such as "An apparatus."

The word "and" should follow the second to last line, instead of the third.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 15-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the claims are recited as executable code not embodied on a computer readable medium.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claim states "the given indication" which has no antecedent basis. For the purposes of this office action, it is interpreted that claim 22 correctly depends on claim 21.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 15-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Goldszmidt et al. (US Patent 6,195,680.)

10. As per claim 15, Goldszmidt teaches an apparatus, comprising:

a processor; a media player; (Goldszmidt, column 5, lines 26-31, and column 8, lines 19-23)

code executable by the processor to carry out the following method steps:

as a media stream is being received from a first server and rendered by the media player (Goldszmidt, column 5, lines 54-59, and column 8, lines 19-23), determining whether the media stream is acceptable according to a given metric; (Goldszmidt, column 7, lines 10-45)

if the media stream is not acceptable, and as the media stream continues to be received, taking a given action to initiate delivery of the media stream from a second server; receiving the media stream from the second server; and (Goldszmidt, column 7, lines 10-45)

rendering the media stream in the media player (Goldszmidt, column 8, lines 19-23.)

11. As per claim 16, Goldszmidt teaches the system further wherein the code is executable by the processor to initiate an instruction to the first server to cease transmission of the media stream after the media player begins rendering the media stream received from the second server (Goldszmidt, column 9, lines 7-23, specifically figure 3a.)

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12. As per claim 17, Goldszmidt teaches the system further wherein the given action includes issuing a request to the second server to begin the media stream at a given offset (Goldszmidt, column 9, line 61 to column 10, line 5, and column 10, lines 44-48.)

13. As per claim 18, Goldszmidt teaches the system further wherein the code is executable by the processor to match data packets received from the first and second servers such that the media stream rendered in the media player appears continuous (Goldszmidt, column 9, line 61 to column 10, line 5, and column 10, lines 44-48.)

14. As per claim 19, Goldszmidt teaches the system further including a buffer in which at least a portion of the media stream is cached before the given action is taken (Goldszmidt, column 14, lines 11-20.)

15. As per claim 20, Goldszmidt teaches the system further wherein the media stream is not acceptable if it is being thinned by the first server (Goldszmidt, column 9, lines 7-23.)

16. As per claim 21, Goldszmidt teaches the system further wherein the media stream is not acceptable if a given indication from the first server is received (Goldszmidt, column 7, lines 10-45.)

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17. As per claim 22, Goldszmidt teaches the system further wherein the given indication is that the first server will be unavailable (Goldszmidt, column 7, lines 10-45.)

18. As per claim 23, Goldszmidt teaches the system further wherein the code executable by the processor determines that the second server has a response time that differs from a response time of the first server (Goldszmidt, column 10, lines 6-19.)

19. As per claim 24, Goldszmidt teaches the system further wherein the code executable by the processor determines whether the media stream is acceptable periodically as the media stream is being delivered (Goldszmidt, column 9, lines 7-23.)

20. As per claim 25, Goldszmidt teaches the system further wherein the code executable by the processor records given data associated with receipt of the media stream (Goldszmidt, column 5, lines 33-49.)

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharra can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3718.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nicholas Taylor

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Examiner

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RUPAL DHARIA
SUPERVISORY PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'Rupal Dharia', with a long horizontal line extending to the right.